Dynamic Plantations Bhd v YB Menteri Sumber Manusia & Anor and another appeal

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 01(F)-8 OF 2008(W) AND 01(F)-7 OF 2008(W)
ZAKI AZMI CHIEF JUSTICE, ZULKEFLI AND MOHD GHAZALI FCJJ
7 JANUARY 2010

Labour Law — Industrial Court — Award — Finality of — Industrial Relations Act 1967 s 33B(1)

Labour Law — Industrial Court — Reference by Minister — Whether dispute referred by Minister trade dispute or dispute over trade union recognition — Whether definition of trade dispute very wide — Industrial Relations Act 1967 ss 2, 18 & 26(2)

Labour Law — Trade union — Recognition — Whether statutory procedure for recognition of trade union exclusive procedure for recognition — Whether trade union may be recognised by conduct of employer — Whether statutory recognition once given could be withdrawn — Industrial Relations Act 1967 s 9(2)

The appellant withdrew its membership from an employer's trade union known as MAPA on 23 May 2000. During its time as a member, the appellant had negotiated and entered into five collective agreements with the second respondent — a trade union of employees. However, the appellant had never conferred recognition on the second respondent. Neither had the second respondent sought the appellant's recognition. Sometime after the appellant left MAPA, the second respondent invited the appellant, pursuant to s 13 of the Industrial Relations Act 1967 ('IRA'), to commence collective bargaining concerning the employment of a category of the appellant's employees. The appellant declined the invitation on the basis that it had not granted recognition to the second respondent. The second respondent referred the matter to the first respondent who subsequently referred the matter to the Industrial Court as a trade dispute under s 26(2) of the IRA. The appellant's application to the High Court for certiorari was dismissed. Its appeal to the Court of Appeal in respect of the High Court's dismissal was also dismissed with costs. The appellant obtained leave to appeal to the Federal Court. The issue for determination was whether the first respondent had acted ultra vires in referring the dispute over recognition to the Industrial Court as a trade dispute when the second respondent had neither sought nor

obtained recognition from the appellant. The second respondent raised a preliminary objection on the basis that the appellant had settled the dispute by consent in the Industrial Court through several awards and there was thus no 'live issue'. Further, if the Federal Court allowed the appeal, the court would be ignoring s 33B(1) of the IRA.

Held, dismissing the appeal with costs:

(1) The preliminary question ought to be dismissed. The decision of the Federal Court in the appeal would not have any effect on the awards entered into by the parties. The question framed for the Federal Court's determination did not relate to the awards. Since the awards were made by way of consent of the parties in the Industrial Court, it was clear that the awards were final, conclusive and could not be challenged, appealed against, reviewed, quashed or called in question in any court under s 33B(1) of the IRA (see para 7).

(2) The majority of the Court of Appeal was correct in deciding that although the second respondent had not sought recognition from the appellant under s 9 of the IRA, by participating in MAPA as a member and agreeing to be bound by the terms and conditions of the collective agreements, the appellant had by conduct recognised the second respondent as a trade union of its employees. The appellant's contention that though it was bound by the collective agreements it had never recognised the second respondent was untenable (see paras 8, 12 & 15).

(3) The majority of the Court of Appeal was correct in deciding that the word 'may' in s 9(2) of the IRA allowed for a certain degree of flexibility in recognising a trade union. The statutory procedure for recognising a trade union in s 9(2) of the IRA was not the exclusive procedure for recognition (see para 12).

(4) It is the policy and purpose of the IRA in respect of its statutory procedure of recognition that once recognition is given, it cannot be withdrawn (see para 19); *Kennesion Brothers Sdn Bhd v Construction Workers Union* [1989] 2 MLJ 419 referred.

(5) The first respondent had rightly referred the dispute directly to the Industrial Court under s 26(2) of the IRA as a trade dispute, as distinct from a dispute over recognition. The definition of a trade dispute was very wide. If a dispute was connected with employment, it was a trade dispute. This was sensible because the objective of the IRA was to confer on the Industrial Court power to sort out issues between employee and employer. Therefore, based on of ss 2, 18 and 26 of the IRA, it was clear that the second respondent's complaint was a trade dispute. It was a trade dispute on the issue of a failure to reach a collective agreement between the parties and not on the issue of

recognition. The first respondent thus had the jurisdiction to refer the matter to the Industrial Court for resolution (see paras 22 & 24).

[Bahasa Malaysia summary

Perayu menarik balik keahliannya daripada kesatuan sekerja majikan yang dikenali sebagai MAPA pada 23 Mei 2000. Semasa ia menjadi ahli, perayu telah berunding dan memasuki empat perjanjian kolektif dengan responden kedua kesatuan sekerja pekerja-pekerja. Perayu walau bagaimanapun tidak pernah memberikan pengiktirafan kepada responden kedua. Manakala responden kedua juga tidak memohon pengiktirafan perayu. Selepas perayu meninggalkan MAPA, responden kedua menjemput perayu, berikutan s 13 Akta Perhubungan Perindustrian ('APP'), untuk memulakan perjanjian kolektif berkaitan pengambilan kerja sesuatu kategori pekerja-pekerja perayu. Perayu menolak jemputan atas dasar bahawa ia tidak memberikan pengiktirafan kepada responden kedua. Responden kedua merujuk perkara tersebut kepada responden pertama yang kemudiannya merujuk perkara tersebut kepada Mahkamah Perindustrian sebagai pertikaian dagang di bawah s 26(2) APP. Permohonan perayu ke Mahkamah Tinggi untuk certiorari ditolak. Rayuannya ke Mahkamah Rayuan berkaitan penolakan Mahkamah Tinggi juga ditolak dengan kos. Perayu memperolehi kebenaran untuk merayu ke Mahkamah Persekutuan. Isu untuk penentuan adalah sama ada responden pertama telah bertindak ultra vires dalam merujuk pertikaian tersebut terhadap pengiktirafan ke Mahkamah Perusahaan sebagai pertikaian dagang apabila responden kedua tidak memohon atau memperolehi pengiktirafan daripada perayu. Responden kedua membangkitkan bantahan awalan atas dasar bahawa perayu telah menyelesaikan pertikaian dengan kebenaran di Mahkamah Perindustrian melalui pelbagai award dan oleh itu tidak terdapat 'live issue'. Selanjutnya jika Mahkamah Persekutuan membenarkan rayuan, mahkamah akan tidak mengindahkan s 33B(1) APP.

Diputuskan, menolak rayuan dengan kos:

(1) Soalan permulaan patut ditolak. Keputusan Mahkamah Persekutuan dalam rayuan tidak akan menjejaskan award-award yang dimasuki oleh pihak-pihak. Soalan yang dirangka untuk penentuan Mahkamah Persekutuan tidak berkaitan dengan award-award. Memandangkan award-award dibuat dengan izin kedua-dua pihak di Mahkamah Perusahaan, adalah jelas bahawa award-award tersebut adalah muktamad, konklusif dan tidak boleh dicabar, dirayu terhadapnya, disemak, dibatalkan atau dipersoalkan di mana-mana mahkamah di bawah s 33B(1) APP (lihat perenggan 7).

(2) Keputusan majoriti Mahkamah Rayuan adalah betul dalam memutuskan bahawa walaupun responden kedua tidak memohon untuk pengiktirafan daripada perayu di bawah s 9 APP, dengan menyertai MAPA sebagai ahli dan bersetuju untuk diikat oleh terma

dan syarat-syarat perjanjian-perjanjian kolektif, perayu melalui tindakan mengiktiraf responden kedua sebagai kesatuan sekerja pekerja-pekerjanya. Hujahan perayu bahawa walaupun ia terikat oleh perjanjian-perjanjian kolektif ia tidak pernah mengiktiraf responden kedua tidak dapat dipertahankan (lihat perenggan 8, 12 & 15).

(3) Keputusan majoriti Mahkamah Rayuan adalah betul dalam memutuskan bahawa perkataan 'may' di dalam s 9(2) APP membenarkan peringkat kelenturan yang tertentu dalam mengiktiraf sesuatu kesatuan sekerja. Prosedur statutori untuk mengiktiraf sesuatu kesatuan sekerja di dalam s 9(2) APP bukan prosedur eksklusif untuk pengiktirafan (lihat perenggan 12).

(4) Ia adalah polisi dan tujuan APP berkaitan prosedur statutori pengiktirafan bahawa apabila sahaja pengiktirafan diberi, ia tidak boleh ditarik balik (lihat perenggan 19); *Kennesion Brothers Sdn Bhd v Construction Workers Union* [1989] 2 MLJ 419 dirujuk.

(5) Responden pertama betul dalam merujuk pertikaian tersebut terus kepada Mahkamah Perusahaan di bawah s 26(2) APP sebagai pertikaian dagang, sebagai berbeza daripada pertikaian terhadap pengiktirafan. Maksud pertikaian dagang adalah terlalu luas. Jika pertikaian berhubung dengan pekerjaan, ia adalah pertikaian dagang. Ini adalah wajar kerana objektif APP adalah untuk memberikan kepada Mahkamah Perushaaan kuasa untuk menyelesaikan isu-isu di antara pekerja dan majikan. Oleh itu, berdasarkan ss 2, 18 dan 26 APP, ia adalah nyata bahawa rungutan responden kedua adalah pertikaian dagang. Ia adalah pertikaian dagang atas isu kegagalan untuk mencapai perjanjian kolektif di antara kedua-dua pihak dan bukan atas isu pengiktirafan. Responden pertama oleh itu mempunyai bidang kuasa untuk merujuk perkara tersebut ke Mahkamah Perusahaan untuk resolusi (lihat perenggan 22 & 24).]

Notes

For cases on award, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1411–1476.

For cases on recognition, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1741–1763.

For cases on reference by Minister, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1606–1617.

Cases referred to

Kennesion Brothers Sdn Bhd v Construction Workers Union [1989] 2 MLJ 419, SC (refd)

National Union of Gold, Silver & Allied Trades v Albury Bros Ltd [1978] ICR 62 (refd)

Legislation referred to

Industrial Relations Act 1967 ss 2, 9, 9(2), 13, 13(1), (7), 17(2), 18, 18(1), 26, 26(2), 33B(1)
Trade Unions Act 1959 s 12

C Sri Kumar (Kumar Partnership) for the appellants.
Jamhirah bt Ali (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
B Lobo (Lobo & Associates) for the second respondent.

Zulkefli FCJ (delivering judgment of the court):

INTRODUCTION

[1] These two appeals were heard together and it was agreed by all parties that the decision in Appeal No 01(f)-8 of 2008(W) will bind Appeal No 01(f)-7 of 2008(W). The appellant in Appeal No 01(f)-7 of 2008(W) is IOI Corporation Bhd. The appellant in Appeal No 01(f)-8 of 2008(W) is Dynamic Plantations Bhd. Both the appellants are public listed companies which own palm oil and rubber plantations and were members of an employer trade union known as Malayan Agriculture Producers Association ('MAPA') since 1983. On 17 July 2008, this court granted to both the appellants leave to appeal against the decision of the Court of Appeal on the following question:

> Whether the first respondent acted in excess of jurisdiction and/or committed an error of law when he referred the dispute over recognition to the Industrial Court for adjudication as a trade dispute under s 26(2) of the Industrial Relations Act 1967 ('the IRA') over the failure of parties to conclude a collective agreement when the second respondent had neither sought nor obtained recognition from the appellant pursuant to the provisions of s 13(1) read together with s 9(2) of the IRA.

[2] For the purpose of argument in the appeal, learned counsel for both the appellants stated that he would be referring to the appeal records of the appellant in Appeal No 01(f)-8 of 2008(W).

BACKGROUND FACTS

[3] The relevant background facts of the case for Appeal No 01(f)-8 of 2008(W) are as follows:

(a) The appellant was a member of MAPA. MAPA is a trade union of employers in the plantation industry registered under s 12 of the Trade Unions Act 1959.

(b) The appellant withdrew from membership of MAPA on 23 May 2000 and ceased to be a member of MAPA thereafter. A

(c) Prior to the appellant's withdrawal as a member of MAPA on 23 May 2000, MAPA had negotiated and entered into five separate collective agreements with the second respondent, the last of which was the 1997 collective agreement which was effective for the period 1 January 1997 to 1 January 2000. The appellant was bound by these collective agreements by reason of the fact that it was a member of MAPA at the material time. B

(d) The appellant has never directly conferred recognition on the second respondent and neither has it been sought and obtained by the second respondent. C

(e) On 12 June 2000, after its withdrawal from membership with MAPA, the appellant received an invitation from the second respondent pursuant to s 13 of the IRA to commence collective bargaining with a view to concluding a collective agreement concerning the wages and terms and conditions of employment of harvesters. D

(f) By a letter dated 21 June 2000, the appellant rejected the invitation on the basis that it had not granted recognition to the second respondent to enter into negotiations pertaining to the fresh collective agreement. E

(g) By a letter dated 26 June 2000, the second respondent took the position that it did not agree with the appellant's contention pertaining to the issue of recognition and referred the matter to the first respondent pursuant to s 18(1) of the IRA. F

(h) Having failed to reconcile the dispute between the appellant and the second respondent, on 29 August 2000 the first respondent referred the dispute directly to the Industrial Court under s 26(2) of the IRA ('the first respondent's decision') as a 'trade dispute' as distinct from a dispute over recognition. G

(i) The appellant applied for an order of certiorari to quash the first respondent's decision vide Kuala Lumpur High Court Application For Judicial Review No R2–25–96 of 2000 ('the JR application').

(j) On 22 April 2002, the High Court dismissed the JR application. H

(k) The appellant appealed against the decision of the High Court to the Court of Appeal vide Civil Appeal No W-01–30 of 2002 ('the appeal').

(l) The appeal was heard on 14 April 2008 and was dismissed with costs on 17 April 2008 by a majority of 2:1. I

PRELIMINARY OBJECTION

[4] Learned counsel for the second respondent at the outset of the hearing

before us raised a preliminary objection on the issue as to the status of both the appellants' appeals at this stage in view of the fact after the High Court had refused the appellants' JR application, the appellants had by consent settled the matter (pursuant to the said reference) in the Industrial Court vide Industrial Court Award Nos 317, 318 and 319 of 2005 ('the said awards'). The said awards were expressed to be subjected to the outcome of the Court of Appeal's decision in this case. It is the contention of the second respondent that the said awards can be varied only by any Court of Appeal's decision and the Court of Appeal has not done that.

[5] Learned counsel for the second respondent also contended that in the event that this court allows these two appeals, this court will be ignoring the effect of provision of the said s 33B(1) of the IRA. Section 33B(1) of the IRA provides as follows:

> (1) Subject to this Act ..., an award, decision or order of the Court under this Act (including the decision of the Court whether to grant or not to grant an application under section 33A(1)) shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court.

[6] To the second respondent the statement in the said awards is final and conclusive and the appellants by these appeals are trying to quash the said awards by the 'back door'. The second respondent further contended that there is no live issue to be decided between the parties and this court will not decide on matters which have become academic. On this ground alone learned counsel for the second respondent submitted that the appeal of both the appellants should be dismissed.

[7] With respect, we could not agree with the above contention of the second respondent. It is our considered view that the decision of this court on the two appeal cases before it will not have any effect on the said awards entered into by the parties. The question framed for the determination of this court does not relate to the said awards. It focuses on the principal issue of whether the Minister of Human Resources as the first respondent has jurisdiction to refer the purported dispute over refusal by the appellant to negotiate a collective agreement with the second respondent to the Industrial Court for adjudication as a 'trade dispute' under s 26(2) of the IRA when the second respondent had not sought nor obtained recognition from the appellant under the provision of the IRA. At any rate in our view the fact that the said awards were made by way of consent of both parties before the Industrial Court is therefore clear that the awards made are final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court under s 33B(1) of the IRA. Based on the circumstances of this case, the preliminary objection on the issue raised by the

second respondent is therefore dismissed.

THE APPELLANT'S CONTENTION

[8] We shall now deal with the merits of the appellant's case. It is the contention of the appellant that before the second respondent can invite the appellant to collective bargaining, the second respondent must first be recognised by the appellant. The appellant further contended that since the second respondent had not sought recognition from the appellant and neither has the appellant granted any recognition to the second respondent under s 9 of the IRA, a trade dispute over the failure to conclude a collective agreement could not have arisen to permit the first respondent to refer the dispute to the Industrial Court.

[9] Learned counsel for the appellant submitted that the question framed for our determination brings into focus the mandatory character or otherwise of the recognition pre-condition in s 13(1) of the IRA and the obligatory character of the process of seeking and obtaining recognition under s 9(2) of the IRA. Section 13(1) of the IRA provides as follows:

> (1) Where a trade union of workmen has been *accorded* recognition by an employer ...
>
> (a) the trade union of workmen may invite the employer ... to commence collective bargaining; or
>
> (b) ... (Emphasis added.)

Section 9(2) of the IRA provides as follows:

> Subject to subsection (1), a trade union of workmen *may* serve on an employer or on a trade union of employers in writing in the prescribed form a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the members of such trades union of employers. (Emphasis added.)

[10] It is the appellant's case that the use of the word 'accorded' under s 13(1) of the IRA must be interpreted to mean that recognition had been sought and obtained. To the appellant recognition is pivotal because the IRA provides a statutory process by which employers and employees can enter into collective bargaining. Section 9 of the IRA provides the strict procedure how recognition is to be secured and obtained. It is necessarily strict because it enables a trade union to negotiate and determine the terms and conditions of employment. Further, the process enables employers to satisfy themselves that the union claiming recognition is truly representative of the majority of the particular class of employees.

[11] As regards the past collective agreements entered into by the appellant during the appellant's tenure of membership with MAPA, the appellant maintained its contention that they did not confer recognition upon the second respondent. However, the appellant stated that it was not contesting the validity of these past collective agreements.

DECISION

[12] We are of the view the majority judgment of the Court of Appeal was right in arriving at the decision that although the second respondent had not sought recognition from the appellant under s 9 of the IRA, but by participating in MAPA as a member and agreeing to be bound by the terms and conditions of the collective agreements, the appellant has by conduct recognised the second respondent as a trade union of its employees for that category of work. On the need for strict compliance of s 9 of the IRA before recognition can be granted to the second respondent as contended by the appellant, we are in agreement with the finding of the majority judgment of the Court of Appeal that the word 'may' appearing in s 9(2) of the IRA allows a certain degree of flexibility for a trade union to be recognised. In other words, the statutory procedure for recognition of a trade union in s 9(2) of the IRA is not the exclusive procedure for recognition. This contention is fortified by the fact that the said s 13(1) of the IRA does *not* state '… where a trade union of workmen has been accorded recognition by an employer under section 9 of the IRA'.

[13] The common law recognises that the act of recognition can be granted by the appellant to the second respondent by reference to conduct. On this point we would like to refer to a passage of the book *Trade Union Law* (2nd Ed) by Richard Kidner at p 13 wherein it is stated as follows:

> The main problem in determining whether recognition has taken place is whether an employer has agreed to bargain. In most cases the employer and the union will have entered into a procedure agreement which defines the areas suitable for bargaining, the employees covered and the procedure to be followed. However, such a formal structure is not necessary and the difficult issue is the extent to which previous conduct can establish recognition.

[14] Still on the issue of recognition in the case of *National Union of Gold, Silver & Allied Trades v Albury Bros Ltd* [1978] ICR 62, Philips J in delivering the judgment of the employment appeal tribunal at p 65, inter alia, established the following propositions:

> First that recognition is a mixed question of fact and law; secondly that it requires mutuality, that is the employer acknowledges the role of the union and the union assents; thirdly that the agreement may be express or implied; fourthly that if it is

said to be implied the acts relied on must be clear and unequivocal and (usually) involved a course of conduct over a period of time.

[15] Based on the factual circumstances of the present case, we are of the view that the appellant has by conduct recognised the second respondent as a trade union of its employees. The collective agreements were negotiated and entered into by MAPA on behalf of appellant. The appellant was expressly named as a consenting member of MAPA in the collective agreements. There was not just one collective agreement but a series of five in succession, each after the previous term has expired and replaced by a new collective agreement. The appellant's contention that though it was bound by such collective agreements at the material time and yet it has never recognised the second respondent is untenable. In our view the appellant has already recognised the second respondent by entering into a binding collective agreement with the second respondent without the need to comply with the formality of s 9 of the IRA.

[16] The minority judgment of the Court of Appeal in dealing with the issues relating to collective agreement and recognition, inter alia, had this to say:

> ... During the pendency of its membership in MAPA and the pendency of the life span of the last collective agreement both parties are bound by the agreement between them. This issue must be made clear. Insofar as the terms of the last collective agreement are concerned, parties are bound by them and these would be incorporated in the terms of employment implied or express. They are good until the next collective agreement. If the new terms are to be had, then negotiations can only be initiated between the appellant and a 'recognized' trade union. The 'recognition' does not run in perpetuity. What does, however, are the terms of the collective agreement until they are substituted or amended with a new collective agreement ... (see pp 7–8 of the supplementary record of appeal).

[17] From the above minority judgment of the Court of Appeal the following points can be discerned:

(a) The collective agreement between the appellant and the second respondent runs in perpetuity.

(b) During the currency of the collective agreement no question of recognition can arise.

(c) That the 'recognition' vide the collective agreement does not run in perpetuity.

[18] With respect, the minority judgment of the Court of Appeal in our view failed to address the question as to whether the collective agreement was

in force despite the cessation of the appellant, on 23 May 2000 as members of MAPA. On this question we would answer it to be in the affirmative. Article 2 Part 1 of the collective agreement provides for the collective agreement to run until superseded by a new collective agreement or an award of Industrial Court. Such an arrangement is also provided for under s 17(2) of the IRA which reads:

> As from such date and for such period as may be specified in the collective agreement it shall be an implied term of the contract between the workmen and employers bound by the agreement that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement or a decision of the Court.

[19] The majority judgment of the Court of Appeal was therefore right in its finding that as there is no new collective agreement or a decision of the court to vary it, the collective agreement continues to be in force and the question of the second respondent not being recognised does not arise.

[20] It is also to be noted that it is the policy and purpose of the IRA in respect of its statutory procedure of recognition that once recognition is given, there can be no withdrawal of the recognition. On this point the Federal Court in the case of *Kennesion Brothers Sdn Bhd v Construction Workers Union* [1989] 2 MLJ 419 at p 421 had this to say:

> Once the employer has accorded the recognition, we agree with the learned judge that there appears to be no provision in the Act enabling the employer to act unilaterally in withdrawing or revoking the recognition.

[21] On the issue of whether the first respondent has jurisdiction to treat the matter arising between the appellant and the second respondent as a 'trade dispute' the minority judgment of the Court of Appeal held the view that the dispute over the refusal to engage in collective bargaining can only become a trade dispute by virtue of the deeming provision in s 13(7) of the IRA. It also held that in the absence of recognition under s 9 of the IRA, a union cannot issue an invitation under s 13(1) of the IRA. As a result too, it further held there cannot be deemed a trade dispute under s 13(7) which is capable of being reported under s 18 — which in turn become the basis for conciliation under s 18 and reference under s 26(2) (see p 28 of the supplementary record of appeal).

[22] With respect, in our view the above reasoning of the minority judgment is not correct. Firstly, it is to be restated that recognition can also be granted by way of conduct of the parties and that recognition under s 9 of the IRA is not the exclusive procedure for recognition. Secondly, by

reference to ss 18 and 26 of the IRA it will show that the first respondent had rightly referred the dispute directly to the Industrial Court under s 26(2) of the IRA as a trade dispute as distinct from a dispute over recognition. Section 18 of the IRA is reproduced as follows:

18

(1) Where a trade dispute exists or is apprehended, that dispute, if not otherwise resolved, may be reported to the Director General by —

(a) An employer who is a party to the dispute or a trade union of employers representing him in the dispute; or

(b) A trade union of workmen which is a party to the dispute.

(2) The Director General shall consider any dispute reported to him under subsection (1) and take such steps as may be necessary or expedient for promoting an expeditious settlement thereof: Provided that where the dispute relates to the dismissal of a workman, the provisions of section 20 shall apply.

(3) Where a trade dispute exists or is apprehended, which in his opinion is not likely to be settled by negotiation between the parties, the Director General may, if he deems it necessary in the public interest take such steps as may be necessary or expedient for promoting a settlement thereof whether or not the trade dispute has been reported to him.

(4) The steps taken by the Director General under subsection (2) or (3) shall include reference of the dispute for settlement to any appropriate machinery which already exists by virtue of an agreement between or applicable to the parties to the dispute, unless —

(a) the dispute has already been referred to such machinery and there has been a failure to reach a settlement; or

(b) in his opinion it is unlikely that the dispute will be promptly settled through such machinery.

(5) Where, after having taken the steps under subsection (2) or (3), the Director General is satisfied that there is no likelihood of the trade dispute being settled, he shall notify the Minister accordingly.

Section 26 provides as follows:

(1) Where a trade dispute exists or is apprehended, the Minister may, if that dispute is not otherwise resolved, refer the dispute to the Court on the joint request in writing to the Minister by the trade union of workmen which is a party to the dispute and the employer who is a party to the dispute or a trade union of employers which is a party to the dispute.

(2) The Minister may of his own motion or upon receiving the notification of the Director General under section 18(5) refer any trade dispute to the Court if he is satisfied that it is expedient so to do: Provided that in the case of a trade dispute in any Government service or in the service of any

A statutory authority, reference shall not be made except with the consent of the Yang di-Pertuan Agong or State Authority as the case may require.

(3) If there exists in any industry any arrangement for the settlement of trade disputes, made in pursuance of an agreement between an employer or a trade union of employers and a trade union of workmen, the Minister shall
B not refer the trade dispute to the Court in accordance with subsections (1) and (2) unless there has been a failure to obtain a settlement by means of those arrangements or in his opinion it is unlikely that the dispute will be expeditiously settled through such arrangements.

C **[23]** A reference has also to be made to s 2 of the IRA on the definition of 'trade dispute' which, inter alia, provides as follows:

... trade dispute means *any* dispute between an employer and his workmen which is *connected* with the employment ... (Emphasis added.)

D

[24] The definition of a trade dispute is very wide. If a dispute is connected with employment, it is a trade dispute. This is sensible because the objective of the IRA is to confer on the Industrial Court power to sort out issues
E between the employee and the employer. Therefore, based on the above provision of ss 18, 26 and 2 of the IRA, it is clear that the second respondent's complaint was a trade dispute. It was a trade dispute on the issue of a failure to reach a collective agreement between the parties and not on the issue of recognition. The first respondent therefore had the jurisdiction to refer the
F matter to the Industrial Court as such for resolution.

CONCLUSION

[25] For the reasons above stated we would answer the question posed in
G this appeal in the negative. The appeal by both the appellants is therefore dismissed with costs. We would herein make an order of costs for a sum of RM40,000 to be paid by the appellants to each of the two respondents in these two appeal cases totaling RM80,000. The deposit is to be paid to the respondents towards costs.

H

Appeal dismissed with costs.

Reported by Andrew Christopher Simon

I